tracting parties, at the time of making the contract, to contract that in the event appellant should breach its obligation to defend the suits, such as those filed by Schroeder and Henry, and in the event appellee was compelled to employ attorneys to make such defense, it should compel the attorneys so employed to sue it, to recover judgment for their fees in a court of last resort, and that after said judgment had become final and appellee had paid said judgment, and only then, and not until then, would appellant be liable for attorney's fees incurred by appellee by reason of appellant's refusal and failure to defend said suits. In other words, appellee must prosecute, or cause to be prosecuted, a suit against itself to final judgment in a court of last resort, and then pay such judgment before it could sue appellant for damages it had suffered by reason of appellant's breach of its agreement to defend against the suits of Schroeder and Henry. Such contention is wholly untenable, and can not be sustained. In the case of South Knoxville Brick Co. *v.* Surety Co., above cited, where practically the same issues as involved in the present case were being discussed, the Supreme Court of Tennessee said: 'Assured could not have supposed that the company would breach its contract in the outset and occasion loss by refusing to assume responsibility for a suit based upon a claim covered by the policy. The company could not have intended, as a consequence of its own default, to make this default the occasion for the imposition of a new condition upon assured. The parties were not contracting with reference to an initial breach by either, and this condition evidently refers to losses under suits defended, as provided in the policy, by the company, and not to losses under suits for which the company repudiated its liability. This is the construction placed upon an identical condition in a similar policy by the Supreme Court of the United States, and its reasoning is so apt and conclusive we adopt it here as a satisfactory disposition of the contention here made.' In a similar case, Royal Indemnity Co. *v.* Schwartz (172 S. W. 581), the court said: 'The Company having refused to defend, as it had obligated itself to do, it was incumbent upon Schwartz to conduct his own defense. Since the question of Schwartz's liability for the death of the child is not now in question, because he is not suing for the amount paid as damages, but only for attorney's fees for which he is liable, he is clearly entitled to recover, and it was not necessary that the fee be paid to enable him to recover, but when he established that he was obligated to pay, and that the fee is reasonable, the liability contemplated by the policy has arisen, and his cause of action accrued.'"

Interpreters—Interest in Result of Action.—In Paucher *v.* Enterprise Coal Mining Co., 168 N. W. 86, the Supreme Court of Iowa held that the fact that an interpreter in a personal injury action was

interested in the outcome of the suit under an agreement to receive 10 per cent of the amount recovered constituted an objection to his selection justifying the court in refusing to appoint him, since a person selected as interpreter ought to be disinterested, unprejudiced and unbiased. It was also held, that the appointment of the interpreter who was interested in the suit was not reversible error, as it actually appeared that the appellants who had filed a petition for a new trial had not been prejudiced.

The court said:

"We shall not review the cases cited, but proceed to state some of the circumstances from which we conclude that defendant suffered no prejudice. It should be stated though, perhaps, that plaintiff was an Austrian coal miner, and had received a serious injury in defendant's mine. He could not speak, read, write or understand the English language, and was ignorant of American law or proceedings in court. Krantz was a fellow countryman working in the same mine who had been in this country for some time, and could speak, read and write both the English and Austrian languages. It is contended by appellee that it was necessary for plaintiff to have some one to assist him, and that he applied to Krantz; that this was necessary in order that plaintiff might employ an attorney and look up evidence and look up matters necessary for trial which plaintiff himself could not do, and that Krantz could not perform these services without loss of time from his work, and that plaintiff was unable to compensate him except there should be a recovery from the defendant, and that these are the reasons for plaintiff agreeing to pay Krantz compensation. The question as to the validity of such a contract is not before us. It is contended by appellee that defendant is in no position to complain, because as soon as defendant's manager learned of the arrangement he recognized and ratified it, and sought to use it for the benefit of the defendant, in that he offered to recognize the claim of Krantz to the 10 per cent of the recovery and pay him the $400, without discount, if he would use his confidential relations and position with plaintiff to induce him to satisfactorily settle with the defendant. These propositions are not very material perhaps in this inquiry.

"Without setting out the evidence bearing upon the point, we are satisfied that there was in fact no actual or conscious fraud on the part of plaintiff or his attorneys in the use of the interpreter. The fact that the interpreter was interested in the recovery was a material fact and would have been available to the defendant as a ground of objection to his selection had it been known. A person selected as interpreter ought to be disinterested, unprejudiced and unbiased. If the fact of his interest was known, ordinarily the court would refuse to appoint such a one if a competent, disinterested interpreter were available. But though interested he was not legally incompetent to

act as interpreter. But it is quite clear to us that defendant suffered no prejudice because of the matter complained of, and this appears affirmatively in the record. As said, there was no conscious fraud on the part of plaintiff or his attorneys. As said by the trial court, it was not suggested that true interpretation was not made of questions propounded or of answers given by the witnesses whose testimony Krantz interpreted, although it is claimed that some of the testimony given by plaintiff is not in accord with the facts; that is, that it is disputed by some of the defendant's witnesses. Krantz interpreted the testimony of but two witnesses, Diphol and the plaintiff. It appears that defendant made no complaint with the testimony of Diphol as interpreted. It is not claimed that the testimony of plaintiff as translated was incorrect. The claim was that plaintiff made a mistake in pointing out Mr. Calvert, the mine foreman, instead of the timberman. Assuming the witness to have been mistaken in this respect, the fact is undisputed that it was the mistake of the witness, and not the mistake of the interpreter, because in the giving of such testimony the witness did point out Calvert, and this was manifest to everybody.

"Some claim is now made in regard to testimony bearing upon the extent of plaintiff's injury, but whatever there may be about this is claimed to have been discovered since the trial. An important consideration in this case is the fact that the testimony which the plaintiff himself gave in the original action was practically undisputed, and the really contested features of the case did not rest upon the facts testified to by the plaintiff in the original case.

"The defense in the original case was as to whether the defendant at the time of plaintiff's injury had complied with the provisions of the Workmen's Compensation Act (Acts 35th Gen. Assem., chap. 147). This appears in this record, and is shown by the opinion in the original case. It further appears that defendant had one Michelovich present in court as its interpreter, and that defendant had him there for the purpose of seeing whether the translation was correct or not, who stated that the translation by Krantz was substantially correct. It is true, of course, as suggested by appellant, that a case might arise where there would be a conflict between the interpreter selected by the court and the defendant's interpreter, and this would add another fact for the jury to decide. But we need not pass that bridge now, because, in this case, there was no conflict; the defendant's interpreter conceding that Krantz had correctly translated the testimony.

"Without further discussion of the evidence or law, and without intending to relax the rule that an interpreter ought to be disinterested, it is our conclusion that under the entire record, which we have read with care, there was no prejudice resulting to the defendant, and that the trial court did not err in overruling defendant's petition."